

ORIGINAL

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 TOM OGNIENE, et al.,

4 PLAINTIFFS,

5 -against-

Case No.  
08cv013335  
(LTS) (TDK)

7 SCHWARTZ, et al.,

8 DEFENDANTS.

10 DATE: June 20, 2008

11 TIME: 9:22 A.M.

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14 EXAMINATION BEFORE TRIAL of the Plaintiff,  
15 SENATOR MARTIN MALAVE DILAN, taken by the Defendants,  
16 pursuant to a Court Order, held at the office of Special  
17 Federal Litigation, New York City Law Department, 100 Church  
18 Street, New York, New York 10007-2601, before a Notary  
19 Public of the State of New York.  
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1 A P P E A R A N C E S:

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4 BOPP, COLESON & BOSTROM, ESQS.  
5 Attorneys for the Plaintiffs  
6 The National Building  
7 1 South Sixth Street  
8 Terre Haute, Indiana 47807-3510  
9 BY: JOSEPH LA RUE, ESQ.

8

9 MICHAEL A. CARDOZO, ESQ.  
10 CORPORATION COUNSEL  
11 NEW YORK CITY LAW DEPARTMENT  
12 Attorney for the Defendants  
13 100 Church Street  
14 New York, New York 10007-2601  
15 BY: JESSE I. LEVINE, ESQ.  
16 Special Assistant Corporation Counsel  
17 FILE #: 2008004838  
18 CONTROL #: III0228

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1 M A R T I N M A L A V E D I L A N, called as a witness,  
2 having been first duly sworn by a Notary Public of the State  
3 of New York, was examined and testified as follows:

4 EXAMINATION BY

5 MR. LEVINE:

6 Q. Please state your name and business address for  
7 the record.

8 A. Senator Martin Malave Dilan, 786 Knickerbocker  
9 Avenue, Brooklyn, New York 11207.

10 Q. Good morning, Senator Dilan.

11 A. Good morning.

12 Q. My name is Jesse Levine. I'm an Assistant  
13 Corporation Counsel, and I'm here to ask you some questions  
14 with respect to the action you brought challenging the  
15 City's local law dealing with campaign finances.

16 A. Right.

17 Q. We're going to try to keep this short. I'm  
18 going to ask you questions only dealing with issues standing  
19 and relating to the Motion for Preliminary Injunction that  
20 you've made, your attorneys have made. And you may be  
21 deposed again down the road, but I'm not going to go into  
22 much more than what we just talked about. All right?

23 A. Okay.

24 Q. Have you ever been deposed before?

25 A. I don't recall. I don't think so.

SENATOR DILAN

1 and even, let's say, if I would file a report, and we would  
2 have 75 matchable contributions from the district, if you  
3 forgot to put in a zip code, if you forgot to put in a phone  
4 number or if they didn't put the title for occupation, the  
5 Campaign Finance Board won't validate those.

6 We would have to go back and make corrections  
7 or get more contributions, so it's very difficult to raise  
8 money within a district like that.

9 Q. So did you get any business contributions from  
10 within the district?

11 A. I would, yes, get from local businessmen, I  
12 would get contributions.

13 Q. Getting back to the litigation for a second. Do  
14 you receive support from the Rent Stabilization Association  
15 in your campaigns?

16 A. Yes, I have.

17 Q. Did your relationship with the Rent  
18 Stabilization Association play any role in your involvement  
19 in this lawsuit?

20 A. No.

21 Q. Do you know who directs the strategy in this  
22 lawsuit?

23 A. No, I don't.

24 Q. Do you control decision-making?

25 A. No.

SENATOR DILAN

1 figure, but I know that we used a firm, you know, we would  
2 have someone who would print the letter to -- we would give  
3 them the contact, they would print it and it would be sent  
4 to a mail house. It's expensive, that's all I remember.  
5 It's expensive proposition, mailings. That's where the bulk  
6 of expenditures would go.

7 Q. I assume, since you got over 80 percent of the  
8 vote, you had a broad-base of support in your community?

9 A. I would say that, yes.

10 Q. And did you have support from businesses?

11 A. For the City Council race?

12 Q. Yes.

13 A. I would say I had support from local individuals  
14 because, in the campaign finance, we were precluded from  
15 accepting money from corporations. And if their proprietors  
16 gave us a contribution, it would be a personal contribution.

17 Q. What about from unions, did you ever get any  
18 union support?

19 A. From union PACs, yes.

20 Q. Can you tell me, per election cycle, which ones  
21 you got?

22 A. I can't tell you per election cycle, but I could  
23 tell you who, generally, I would expect would contribute.  
24 It would be DC37, 32BJ, the hotel workers, UFT, CSA, 1199,  
25 to name a few.

SENATOR DILAN

1 Q. To name a few. What about the uniform --

2 A. Firefighters, yes.

3 Q. Police?

4 A. I don't know if I got, I may have gotten a  
5 contribution from them.

6 Q. Did you ever get one from the Police  
7 Lieutenants' Association?

8 A. It sounds familiar, yeah.

9 Q. Okay.

10 A. I can't recall all of them, but I know we got  
11 pretty good support from union PACs.

12 Q. In preparing for this deposition, did you review  
13 any documents?

14 A. No.

15 Q. Have you, in preparation for this deposition,  
16 reviewed the Public Disclosure Statements kept on file by  
17 the Campaign Finance Board?

18 A. No.

19 Q. Have you ever reviewed those documents?

20 A. Maybe years ago, when I was in the City Council,  
21 perhaps I have.

22 Q. So what I'm going to do is, in order to make  
23 this relatively simple, I'm going to show you, for the  
24 various cycles, ask you to take a look and indicate whether  
25 you can tell from this certain of the contributors fit the  
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SENATOR DILAN

1 A. Right.

2 Q. To your knowledge, would his contribution be  
3 prohibited under the new Campaign Finance Law, \$100?

4 A. If he's contributing, I believe my understanding  
5 is that if he's contributing as an individual, I don't think  
6 it would be precluded. Whether it would be matchable or not  
7 because he's a City Marshal, I don't know the answer to that  
8 either.

9 Q. Have you solicited campaign contributions for  
10 potential City Council running in the 2009 cycle?

11 A. I have not decided, you know, fully that I'm  
12 going to do it. I'm contemplating it. I have not filed any  
13 papers with the Campaign Finance Board, so I have not  
14 solicited any funds.

15 Q. Have you identified any businesses or lobbyists  
16 that you would target for solicitation?

17 A. You're saying, have I formulated a list?

18 Q. Yes.

19 A. Not for that purpose, no.

20 Q. Do you know of any potential contributors who  
21 would be affected by the Campaign Finance Law, in the 2009  
22 cycle?

23 A. The only thing I would say is that I know  
24 currently, with my current position, I may have a fundraiser  
25 and people who will be situated in that situation have

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SENATOR DILAN

1 A. With City agencies, yes.

2 Q. Okay.

3 A. Yeah.

4 Q. And were those dealings affected by the amount  
5 of the contribution that your constituent gave you?

6 A. No.

7 Q. Did it matter to you whether a constituent  
8 contributed or not?

9 A. No.

10 Q. Do you think that campaign contributions who  
11 have business dealings with the City influence the actions  
12 of elected officials?

13 A. I don't think that they do, but at least, you  
14 know, they have not with me.

15 Q. Have you ever heard rumors of certain other City  
16 Councilmen being affected by the contributions of people who  
17 do business with the City?

18 A. I have not had no conversations with anyone  
19 regarding that, no.

20 Q. Do you know whether there's a public perception  
21 that it's a bad thing for --

22 A. Well, I mean, I hear what advocate, you know,  
23 advocate groups may say, you know, I hear the Women League  
24 of Voters talk about it, I hear the media, the editorials,  
25 the press. From that respect, you know, I hear it all the

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SENATOR DILAN

1 time.

2 Q. Do incumbents have an advantage in obtaining  
3 contributions from people who do business with the City?

4 A. I would assume so. I hear the same thing in the  
5 media. I think incumbents have a slight advantage.

6 Q. When you were a councilman, did anybody who  
7 contributed to your campaign ask you for your help in  
8 getting business with the City?

9 A. No.

10 MR. LEVINE: Just give me one minute.  
11 Off the record.

12 MR. LA RUE: Sure.

13 (Whereupon, an off-the-record discussion  
14 was held.)

15 Q. I'm going to ask you a couple of more questions  
16 based on the declaration that you previously signed. Do you  
17 want to take a moment to take a look at this?

18 A. Okay.

19 Q. Paragraph 5 says --

20 MR. LA RUE: Excuse me, is this being  
21 entered into evidence or -- and I'm not  
22 telling you to, I just don't want to note  
23 it, if it's not.

24 MR. LEVINE: I'm going to have this  
25 deemed marked as "J", I'll get a couple of

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SENATOR DILAN

1 getting the democratic line in the general election is  
2 tantamount to election.

3 Q. And if you ran for City Council next year, would  
4 you expect that the democrat would get the same percentage?

5 A. Well, first you have to get past the primary.

6 Q. Right.

7 A. And if you win the primary, I would expect that,  
8 in that council district, that the same rule would apply.

9 Q. Do you know of any potential primary opponents?

10 A. I know that there have been people indicating  
11 that they plan to run, there have been people who, you know,  
12 as a leader of the district, who have even called me to say  
13 they want to sit down to talk about running for City  
14 Council, I heard names of other individuals who are  
15 considering to run, so I expect that there would be a  
16 primary.

17 Q. And again, have you made up your mind whether or  
18 not you're going to run?

19 A. I'm going to be making that decision later this  
20 year.

21 Q. Have you formed any committee to raise funds for  
22 that potential race?

23 A. Not at this time.

24 Q. I'd like you to read paragraph 7. Read that into  
25 the record, please.

SENATOR DILAN

1 MR. LA RUE: What he means is, read it  
2 out loud so that she could type it.

3 MR. LEVINE: Sorry, I forgot.

4 MR. LA RUE: That's fine.

5 A. "Because candidates are currently raising funds  
6 for the 2009 election, it is imperative that the court grant  
7 relief immediately. Every day that passes without judicial  
8 relief is another day that my First Amendment and Fourteen  
9 Amendment rights are impermissibly burdened."

10 Q. Am I correct that your previous answer is that  
11 you have not yet decided whether to run and you have not yet  
12 begun fundraising?

13 A. That's correct.

14 (Continued on next page to include  
15 jurat.)

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SENATOR DILAN

1 MR. LEVINE: I have no further questions.

2 Thank you for your time, sir.

3 (Whereupon, the aforementioned document  
4 was marked as Defendants' Exhibit J for  
5 identification as of this date by the  
6 reporter.)

7 (Whereupon, at 10:26 a.m., the  
8 examination of this witness was concluded.)

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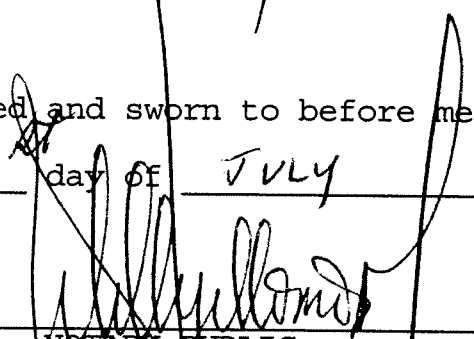
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SENATOR MARTIN MALAVE DILAN

Subscribed and sworn to before me  
this 21<sup>st</sup> day of JULY, 2008.

  
NOTARY PUBLIC  
VICTOR W. VILLAMAR  
Notary Public, State of New York  
No. 24-5001778  
Qualified in Kings County  
Commission Expires Sept. 14, 2010

SENATOR DILAN

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C E R T I F I C A T E

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STATE OF NEW YORK

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COUNTY OF NASSAU

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I, JoANN VANCOSKY, a Notary Public for and  
within the State of New York, do hereby certify:

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That the witness whose examination is  
hereinbefore set forth was duly sworn and that such  
examination is a true record of the testimony given by that  
witness.

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I further certify that I am not related to any  
of the parties to this action by blood or by marriage and  
that I am in no way interested in the outcome of this  
matter.

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IN WITNESS WHEREOF, I have hereunto set my hand  
this 23rd day of June, 2008.

  
JOANN VANCOSKY